SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 69

JESSE MILLER SINCLAIR, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. C. A., Third Circuit	"a"	1
Caption	"a"	1
Appendix to appellant's brief	"a"	1
Relevant docket entries	1	1
Indictment	2	2
Statement of evidence	3	2
Government's evidence	3	2
Phoebe Somers:		
Direct Examination	3	2
Cross-examination	6	5
Edgar L. Mayfield:		
Direct Examination	7	6
John D. Burdon:		
Direct Examination	8	7
Colloquy between Court and counsel	11	9
Motion for judgment of acquittal	14	12
Reporter's certificate	15	12
Government's exhibit 1—Letter addressed to Grace Somers, postmarked July 14, 1948	16	13
Judgment and commitment	17	14
Opinion, per curiam	18	15
Judgment	19	16
Clerk's certificate	19	16
Stipulation as to printed record	20	17
Order allowing certiorari	22	19

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 13, 1949

—3377

[a]

IN THE UNITED
T

U

JESSE

Appeal from the Ju
States District
Pennsylvania

APP

[fol. 1] IN UNITE
DI

RE

Sept. 8, 1948. Tr
Oct. 7, 1948. Ple
Jan. 4, 1949. W
Jan. 4, 1949. Tri
Jan. 4, 1949. Tri
Jan. 4, 1949. De
C. A. V.
Feb. 15, 1949. O
quittal as to Count
and entering a Ve
Mar 21, 1949. S
one year and one d
Mar. 21, 1949.
G. A. Gleeson.
Mar. 21, 1949.
tries filed.
Mar. 21, 1949.
nied.
Mar. 23, 1949.
exit.
Mar. 23, 1949. T
filed.

BLEED THROUGH POOR COPY

[a]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 9940

UNITED STATES OF AMERICA

v.

JESSE MILLER SINCLAIR, Appellant

Appeal from the Judgment and Commitment of the United States District Court for the Eastern District of Pennsylvania

APPELLANT'S APPENDIX

[fol. 1] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA

RELEVANT DOCKET ENTRIES

Sept. 8, 1948. True Bill.
Oct. 7, 1948. Plea: "Not Guilty."
Jan. 4, 1949. Waiver of jury trial filed.
Jan. 4, 1949. Trial (Ganey, J.) Witnesses sworn.
Jan. 4, 1949. Trial concluded.
Jan. 4, 1949. Defendant moves for judgment of acquittal C. A. V.
Feb. 15, 1949. Order of Court granting judgment of acquittal as to Count #2, and denying same as to Count #1, and entering a Verdict of Guilty as to Count #1, filed.
Mar 21, 1949. Sentence: (Count #1) Imprisonment for one year and one day.
Mar. 21, 1949. Notice of appeal filed. 3/21/49 copy to G. A. Gleeson.
Mar. 21, 1949. Copy of Clerk's statement of docket entries filed.
Mar. 21, 1949. In open Court: Bail pending appeal denied.
Mar. 23, 1949. Judgment and Commitment, filed. 2cc exit.
Mar. 23, 1949. Transcript of Testimony of Jan. 4, 1949, filed.

[fol. 2] IN UNITED STATES DISTRICT COURT

INDICTMENT

Filed September 8, 1948

Count I

The Grand Jury Charges:

On or about July 14, 1948, at Media in the Eastern District of Pennsylvania, Jesse Miller Sinclair did knowingly and unlawfully deposit and cause to be deposited for mailing and delivery by the Post Office establishment of the United States, certain non-mailable matter, to wit: a certain obscene, lewd and lascivious letter and writing, which said letter and writing was enclosed in an envelope addressed and directed to Grace Somers, 234 West Summit, Haddonfield, New Jersey, which letter and writing is too obscene, lewd and lascivious to be set forth upon the records of this Honorable Court, but profert whereof is here made; in violation of Section 1461 Title 18 U. S. C. A.

• • • • • • •

True Bill

(S.) August E. Post, Foreman.

(S.) Gerald A. Gleeson, United States Attorney.

[fol. 3] IN UNITED STATES DISTRICT COURT

STATEMENT OF EVIDENCE

GOVERNMENT'S EVIDENCE

Mr. Wolov: Mrs. Somers, take the stand.

PHOEBE SOMERS, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wolov:

Q. Mrs. Somers, will you keep your voice up so that we can all hear.

Do you know the defendant in this case, Jesse Miller Sinclair?

BLEED THROUGH POOR COPY

A. Yes, I do.
Q. How do you know him?
A. Mr. Sinclair married my daughter.
Q. Married your daughter?
A. Yes, sir.
Q. What is your daughter's name?
A. Grace Somers.
Q. Where do you live now, Mrs. Somers?
A. 234 W. Summit, Haddonfield, New Jersey.
Q. Where did you live in 1948?
A. This same address.
Q. Did you ever get any mail from Mr. Sinclair, the defendant?
A. Yes.
Q. Do you recall getting any mail from Mr. Sinclair on or about July 14, 1948?

Mr. Gray: If Your Honor please, the matter of mailing will not bind this defendant until some further proof may be offered before Your Honor.
The Court: I will take it subject to that reservation.

[fol. 4] By Mr. Wolov:

Q. All right, now, Mrs. Somers, did you ever see these letters before? (Producing same.)
A. Yes, I have.
Q. When and where did you see them?
A. They were delivered by the postman in my mailbox.
Q. Do you recall when?
A. July 15.
Q. Of what year?
A. 1948.
Q. Now, I show you letter addressed to Grace Somers, 234 W. Summit, Haddonfield, New Jersey——

Mr. Gray: Just let me glance at that.

By Mr. Wolov:

Q. —and ask you whether you received that in the regular course of the mail?
A. That letter was received along with the one received by me that same day.
Q. Addressed to you?
A. Yes, one addressed to me.

Q. I show you one addressed to Mrs. Ernest Somers, and ask you if that was delivered at the same time (producing same)?

A. Yes.

Q. By the mailman.

A. Yes, sir.

Q. Now, that letter addressed to Grace Somers, did you open that and read it?

A. I did not.

Q. What did you do with that when you received it?

A. I turned it over to Miss Grace Somers.

Q. That is Mrs. Sinclair, your daughter?

A. Yes.

Q. And the letter addressed to yourself, did you open that or read it?

A. I did.

[fol. 5] Q. When you gave that to your daughter, did you see your daughter open it?

A. She did open it in my presence and started to read it but couldn't finish,—it was horrible.

Mr. Gray: I ask that that be stricken—that it was horrible.

Mr. Wolov: All right, that is agreed to.

By Mr. Wolov:

Q. After you read the letter that was addressed to you, what did you do and what did Mrs. Sinclair do with these letters?

Mr. Gray: Now, that is objected to. We are charged with one offense, that is, sending these letters through the mail, and we are not charged with anything else beyond that. I think that is the subject matter before Your Honor and the only thing to which the District Attorney should address himself. Anything that this lady could have done—unless it is your intention to show she delivered them to the authorities, I have no objection to that.

Mr. Wolov: That is correct.

Mr. Gray: I am sorry.

Mr. Wolov: The indictment is laid in two counts.

The Court: That is right.

By Mr. Wolov:

Q. What was done with the letters after they were read?

A. We kept them until Mr. Somers came home, and then

BLEED THROUGH POOR COPY

Mr. Somers and I decided they should be turned over to the proper authorities.

Q. And you took them to the post office inspector?

A. To the post office authorities.

Q. The letter that is addressed to you—have you ever seen your son-in-law's handwriting?

[fol. 6] A. I did, many times.

Q. Could you tell me who wrote that letter?

A. He did.

Mr. Gray: One question there. Did you see him write?

The Witness: Yes, I have seen him write.

Mr. Gray: All right.

Mr. Wolov: At this point I offer in evidence, to be marked Government's Exhibits 1 and 2, the letters, the subject matter of this suit.

Mr. Gray: I am objecting to that at the present time. My friend needs to go a little further before they can be received in evidence; he has got to prove that they were deposited by this defendant in the mails. He may be able to prove that—I don't know.

Mr. Wolov: I will.

The Court: I think that is right. I will take it subject to the objection.

Mr. Wolov: I want to offer this in evidence——

Mr. Gray: No objection to marking it for identification.

By Mr. Wolov:

Q. You say you took them to the post office inspector?

A. Yes.

Mr. Wolov: Cross-examine.

Cross-examination.

By Mr. Gray:

Q. Madam, your daughter was living with you?

A. Pardon me.

Q. Your daughter was living with you?

A. Well, now—she was staying there.

Q. How long had she been staying there?

[fol. 7] A. She had been staying there because they had no home.

Q. Not because—how long?

A. Few months.
Q. Mr. Sinclair was not staying there?
A. He was coming there weekends.

Mr. Gray: That is all.
Mr. Wolov: Mr. Mayfield.

EDGAR L. MAYFIELD, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wolov:

Q. You are connected with the United States Government?
A. Yes.
Q. What capacity?
A. Post office inspector.
Q. Located where?
A. Camden, New Jersey.
Q. Mr. Mayfield, I show you these two letters, and ask you whether you saw these before?
A. Yes, I have seen them.

Mr. Gray: Which one is which?
Mr. Wolov: One is the letter addressed to Grace Somers, that will be marked Exhibit 1.

(The letter referred to was marked as Government's Exhibit 1 for identification.)

And the other is addressed to Mrs. Ernest Somers, Exhibit 2.

(The letter referred to was marked as Government's Exhibit 2 for identification.)

[fol. 8] By Mr. Wolov:

Q. How did you get these letters?
A. These letters were turned over to me by Mrs. Sinclair, her mother and father, Mr. and Mrs. Somers, in our office at Camden, New Jersey, around the middle of July, 1948.
Q. What did you do with them?
A. As both of these letters were postmarked in Pennsylvania, outside of my territory, I forwarded them to the inspector in charge, Philadelphia, Pa.

BLEED THROUGH POOR COPY

Mr. Wolov: That is all.
Mr. Gray: No questions.
Mr. Wolov: Mr. Burdon.

JOHN D. BURDON, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wolov:

Q. Mr. Burdon, you are connected with the United States Government?
A. Yes, sir.
Q. What capacity?
A. Post office inspector.
Q. How long have you been post office inspector?
A. Almost eight years.
Q. Now, you have before you, I believe, Government's Exhibits 1 and 2?
A. Yes, sir.
Q. Did you have these letters in your possession before?
A. Yes, sir.
Q. How did you get them?
A. They were turned over to me by the post office inspector in charge of Philadelphia for investigation.
Q. Now, with these letters, what did you do?
[fol. 9] A. Well, the complaint from the addressees of the letters indicated they were written and mailed by Jesse Miller Sinclair, who at that time resided at 30 Chester Pike, Ridley Park, Delaware County, Pa.
A few days after I received them, which was July 21, 1948, I visited Mr. Sinclair where he either boarded or roomed, or had an apartment, I don't know which, but he stayed there for sometime——
Q. Where was this?
A. Ridley Park.
I exhibited the letters to Mr. Sinclair, and he admitted writing——

Mr. Gray: Tell us what he said, not your conclusion.
The Witness: He told me. "Yes, I had written that letter"—this letter (indicating), but denied writing this letter (indicating).
Mr. Gray: Which one?

By Mr. Wolov:

Q. That is Government's Exhibit 1 letter?
A. Yes, sir.
Q. To Grace Somers?
A. Yes, sir.

The Court: To whom is it addressed?
Mr. Wolov: Grace Somers.
The Witness: Grace Somers.

By Mr. Wolov:

Q. Did you ask him whether or not he had mailed it?
A. Yes, sir.

Mr. Gray: He is a post office inspector, and I think that he can testify himself.

The Witness: During the course of our conversation Mr. Sinclair was more or less offended that I came to the place [fol. 10] where he stayed to talk to him, and apparently to get rid of me he agreed to initial this particular letter to signify that it had been written and mailed by him.

He agreed to come the following day with his lawyer to my office at 30th and Market Streets Post Office, but he never came there.

By Mr. Wolov:

Q. But he initialed the letter addressed to Grace Somers as having been the letter that he wrote?
A. Yes, sir.
Q. That is dated 7-21-48?
A. Yes, sir.
Q. That is the date of the initialing?
A. Yes, sir.
Q. Will you take a look at that letter marked Government's Exhibit 1 and tell me whether or not there is a postmark on that letter?
A. Yes, sir.
Q. Will you read it to me?
A. It is postmarked at Media, Pa., July 14, 1948, 12:30 P. M.
Q. What does that indicate to you?
A. That means that it was mailed in the Media Postal District and was cancelled by the postage machine in the Media Post Office, and then the letter was subsequently

BLEED THROUGH POOR COPY

handled and dispatched to the Haddonfield, New Jersey, Post Office, for delivery by the regular mailman.

Q. Will you now look at the letter that is marked Government's Exhibit 2 and tell us whether there is a post mark on it?

A. Yes, sir.

Q. Will you read that postmark?

A. It is postmarked Chester, Pa., July 14, 1948, at 2:30 P. M.

Q. What does that indicate to you?

A. That indicates that this letter was mailed within the delivery district of the Chester, Pa., Post Office, and [fol. 11] later cancelled by the cancelling machine in the Chester Post Office, and dispatched to Haddonfield, New Jersey.

Q. Did you question him about that second letter?

A. Yes, sir.

Q. What did he say about that?

Mr. Gray: He already said he denied writing it.

The Witness: As I said before, he was not very co-operative——

Mr. Gray: Now, I ask that that be stricken from the record. I must keep my record straight no matter whether we waive a jury trial or not, sir.

The Witness: He said he would rather come to the office and talk to me about the letters, and as I said, he agreed to initial one letter indicating that he had written and mailed it.

By Mr. Wolov:

Q. I believe you testified he never did come to your office afterwards?

A. That is right.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Wolov: At this point I want to offer in evidence these letters——

Mr. Gray: Offer one at a time.

Mr. Wolov: I am offering the letter that is marked Government's Exhibit 1, addressed to Grace Somers, 234 W. Summit, Haddonfield, the one that is initialed.

Mr. Gray: I do not believe I can make any objection to that.

(The letter referred to, marked Government's exhibit 1, was filed with these proceedings.)

Mr. Wolov: And I want to take a look at this—you want to look at this too?

Mr. Gray: No, I have seen it before.

Mr. Wolov: I also offer in evidence the letter marked [fol. 12] Government's Exhibit 2, addressed to Mrs. Ernest Somers, 234 W. Summit, Haddonfield, New Jersey.

Mr. Gray: To which I am making objection because of the fact that the evidence isn't sufficient to justify it being admitted under the section of the act by which the defendant is charged. I can elaborate on that if Your Honor desires.

The. Court: You mean Section 1461?

Mr. Gray: Yes, sir. In other words, there is no evidence here as charged in the indictment and as required for the mailing of that letter.

I raise no question about No. 1 for this reason, the corpus of the offense, that is, a letter being mailed without the person being identified, establishes the fact that someone did that. Now, then, he has initialed that letter, and therefore I am not objecting to that.

On the other hand, the other letter that was received through the mail, he denied the fact that he wrote the letter and mailed it, and there has been no proof that he mailed it, and proof of mailing of the letter by the defendant is necessary under the law.

Mr. Wolov: I believe the fact that the witnesses identified the handwriting of the defendant here, and the fact that it was received in the usual course of the mail, through the regular channels of the United States Government Post Office Department, I believe that is sufficient to constitute the mailing of the letter.

Mr. Gray: Yes, sufficient to prove the mailing of the letter but insufficient to prove the one necessary element, that this defendant mailed it. The indictment charges that he deposited it in the mailbox——

Mr. Wolov: The fact that it was in his handwriting indicates that he wrote the letter and mailed it—that is a matter of defense to deny that.

Mr. Gray: Oh, no, the letter might be in my writing but that wouldn't prove that I mailed it.

[fol. 13] May I call Your Honor's attention to the language of the indictment, Count 1, that he did on or about a certain

BLEED THROUGH POOR COPY

date, knowingly and unlawfully deposit and cause to be deposited for mailing and delivery by the Post Office establishment of the United States, certain unmailable matter, to wit, and then it goes on, but this letter, I must object to, because I do not think he has complied with the requirements.

The Court: Well, it would seem to me that Mr. Gray's contention is very persuasive. It may be that I might write a letter, but the gist of the offense is the mailing, not alone the writing. Would you say it would be an offense if I wrote a letter and let it lie around until someone placed it in the mail? I may have changed my mind and not wanted to mail the letter, and yet someone came around and took the letter off my desk and mailed it. Certainly, I couldn't be guilty of an offense.

Mr. Gray: No, I agree——

The Court: Is it a presumption that one who writes a letter mailed it? How do you bridge that?

Mr. Wolov: I think the presumption is there. Of course, it is a matter of defense——

Mr. Gray: I think my friend is very weak in his presumption, and very weak in his proof, because I do not believe it is sufficient——

The Court: Is there any presumption that he mailed it? I am really asking as a matter of inquiry.

Mr. Gray: As a matter of law there isn't any presumption—there is never any presumption that a man commits a crime.

The Court: In other words, it is requisite that I not only write the letter but actually mailed it?

Mr. Gray: Or causing it to be mailed.

[fol. 14] The Court: Or causing it to be mailed.

Mr. Wolov: That is right.

The Court: I think I will have to sustain Mr. Gray's objection.

Mr. Wolov: I offer in evidence the first letter.

Mr. Gray: You did already, and I have no objection to that.

Mr. Wolov: And I believe Your Honor should read that, because it becomes the Government's case.

The Court: That is the letter that is marked——

Mr. Wolov: Government's Exhibit 1.

The Witness: Yes, sir.

Mr. Wolov: We rest.

MOTION FOR JUDGMENT OF ACQUITTAL

Mr. Gray: I move for judgment of acquittal in this case.

(Argument of counsel on motion.)

(Reply argument by Mr. Wolov.)

The Court: All right, I will reserve decision now.

Mr. Gray: And I can make an additional motion if Your Honor reserves decision.

I suppose we will be advised by the Court Clerk as to when Your Honor will want us here?

The Court: Are you going to put on any defense?

Mr. Gray: I am not putting in any defense.

The Court: You do not wish to be heard on the factual side?

Mr. Gray: No, I do not think there is anything to be said on the factual side.

[fol. 15] The Court: All right, I will look into this at the earliest possible time, and I shall render a final decision on it.

Mr. Gray: And we will be advised?

The Court: Yes, your office will be called.

(Trial closed.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

H. A. B. Schwartz, Court Reporter.

March 23, 1949.

BLEED THROUGH POOR COPY

[fol. 16] GOVERNMENT'S EXHIBIT 1

(Envelope)

(Postmarked Media, Pa., Jul 14 12:30 PM 1948)

Grace Somers
234 W. Summit
Haddonfield
New Jersey

JDB
7-21-48 JMS

Mrs. B saw
the bank books
etc.

JDB
7-21-48 JMS

I and one friend of yours tried to help—you would not let us! You had fainting spells and fell, hurting yourself—don't blame me. Have you told your family how many men you have fucked and sucked their cocks? You are wasting your time—you left only a "rubber" and a box of Kotex—all were thrown out (over) weeks ago—as to money I have plenty—I had 3 (three) deposit books at 3 (three) banks—recently I received $5000. I expect more up to $100,-000—possibly even a greater sum—since you want trouble we shall have it—I wanted to be friendly.

Daily Horoscope
Wednesday, July 14

• • • • • • •

September 24 to October 23 (Libra)—Mixed aspects all day. *Ill-humor and bad manners will affect achievement, lower prestige.* Avoid worry, fussing. And *remember, success is not always continuous.*

• • • • • • • •

[fol. 17] IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT—Filed March 23, 1949

On this 21st day of March, 1949 came the attorney for the government and the defendant appeared in person and by Counsel.

It is adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty as to Count #1 of the offense of depositing in the United States mails obscene letters as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year and (1) day.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

J. Cullen Ganey, United States District Judge.

BLEED THROUGH POOR COPY

[fol. 18] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 9940

UNITED STATES OF AMERICA

v.

JESSE MILLER SINCLAIR, Appellant

Appeal from the Judgment of the United States District Court for the Eastern District of Pennsylvania

Argued May 2, 1949

Before Maris, Goodrich, and McLaughlin, Circuit Judges

OPINION OF THE COURT—Filed May 5, 1949

Per CURIAM:

The appellant was convicted by the district judge, sitting without a jury, on the charge of sending an obscene lewd and lascivious letter to his wife through the mails. Appellant's argument has failed to convince us that his conviction was not fully justified by the evidence or that the trial judge erred in point of law.

The judgment of the district court will be affirmed.

A true Copy: Teste:

—— ——, Clerk of the United States Court of Appeals for the Third Circuit.

[fol. 19] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 9940

UNITED STATES OF AMERICA

v.

JESSE MILLER SINCLAIR, Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania

Present: Maris, Goodrich and McLaughlin, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

By the Court:

Maris, Circuit Judge.

May 5, 1949.

Endorsements: Judgment Affirming Judgment of District Court. Received & Filed May 5, 1949. Ida O. Creskoff, Clerk.

[fol. 20] I, Ida O. Creskoff, Clerk of the United States Courts of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original Appendix to Appellant's Brief, and proceedings in this Court, in the case of United States of America vs. Jesse Miller Sinclair, Appellant, No. 9940, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 10th day of May in the year of our Lord one thousand nine hundred and forty-nine, and of the Independence of the United States the one hundred and seventy-third.

Ida O. Creskoff, Clerk of the U. S. Court of Appeals, Third Circuit. (Seal.)

BLEED THROUGH POOR COPY

17

[fol. 21] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. 783

JESSE MILLER SINCLAIR, Petitioner,

v.

UNITED STATES

STIPULATION

Now comes the parties in the above-entitled cause and stipulate that the applications for and orders denying the petitioner's release on bail need not be printed as part of the record.

——— ———. Philip B. Perlman, Solicitor General.

Dated this 12th day of May, 1949.

3

ED THROUGH
POOR COPY

[fol. 22] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 27, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3377)